

IN THE MATTER OF	:	BEFORE THE
JOAN H. GILLIN	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 08-021N&V

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DECISION AND ORDER

On June 23, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Joan H. Gillin for the confirmation and enlargement of a nonconforming use for a motor vehicle maintenance and repair facility and variances to reduce the 50-foot structure setback from an external street right of way to approximately 47.84 feet for a rear alteration of an existing garage and to about 8.10 feet for side alteration of that same garage in a CE-CLI (Corridor Employment-Continuing Light Industrial Overlay) Zoning District, filed pursuant to Sections 129.D and E and 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Sang Oh, Esquire, represented the Petitioner. No one appeared in opposition to the petition.

At the outset of the hearing, Mr. Oh stated his client agreed with the findings and conclusion in the June 12, 2008 technical staff report ("TSR"). No additional testimony was

presented.

FINDINGS OF FACT

Based upon the TSR, the petition, and my site visit, I find as follows:

1. The subject property is situated on the north side of MD 176 (Dorsey Road) about 1,400 feet northeast of its intersection with US 1 (Washington Blvd.) and is known as 6735 Dorsey Road (the "Property"). The Property is located in the 1st Election District and is identified on Tax Map 37, Block 23, as Lot 284.
2. The 1.72-acre Property is an L-shaped site comprising three rectangular lots, each lot being 250 feet wide and 100 feet deep. It thus has 250 feet of frontage on MD 176, and is 200 feet deep on the southwest lot line and 100 feet deep on the northeast lot line running along Binder Lane.
3. According to the affidavit of Joan H. Gillin attached to the petition, MD Mobile Trailer Service, Inc., the existing business on the site, repairs and maintains truck trailers and other vehicles. The affidavit gives the start date of the motor vehicle maintenance and repair facility as July 1992 and attests the facility has been used as such continuously as such.
4. The functions of the repair facility are principally conducted in four structures: (1) a 955-square foot one-story building (formerly a dwelling) in the Property's northeastern area, near Binder Lane; (2) a 6,025-square foot metal garage in the northerly rear area; (3) a 560-square foot wood trailer in the southwest rear area, which the TSR presumes is used for storage, and; (4) a one-story metal building with what was originally a 5,679-square foot footprint (the "Subject Garage"). The Subject Garage has been enlarged by a 2006-square foot rear enclosure of what is apparently a former paved working area and a 780-square foot enclosure of what was apparently a second paved working area on the adjoining the garage's southwest side.

5. The Subject Garage's original floor area lies entirely within the existing 50-foot structure setback. The side enclosure encroaches about 41.9 feet into this setback and the rear enclosure, about 2.17 feet, hence the variance requests.

6. According to the TSR, a 1992-approved site development plan (SDP 88-095) depicts the Subject Garage entirely within what was then the future setback for the proposed relocation of MD 176.

7. Property History. In 1977 the then R-12 (Residential: Single Family) zoned Property became zoned M-1 (Manufacturing: Light). In 2004, the CE-CLI zone was applied to it and surrounding properties. MD 176 originally ran to the northeast of the Property, which was then an interior lot. When MD 176 was relocated in the 1990s, the Property became a corner lot with frontage on both MD 176 and the old MD 176, which was renamed Binder Lane.

8. On the 1999 Land Use Map, the Property is coded 21-12, "motor vehicle repair and service facilities." The 2002 County aerial photograph clearly depicts all the current structures, with parking and storage areas for vehicles and truck trailers.

9. Vicinal properties are all zoned CE-CLI. To the Property's north are properties apparently used as a dwelling and for storage, and these are separated from the Property by wooded areas. To the north, across Binder Lane, are a restaurant and hotel. To the south, across MD 176 is a large contractor outdoor storage facility and the wooded area of a longstanding pet cemetery that fronts on US 1.

10. The estimated sight distance from the wide entrance driveway situated about mid-center on the Property is about 400 feet to the east and more than 1,000 feet to the southwest.

11. The Petitioner requests confirmation of a nonconforming use for a motor vehicle maintenance and repair facility, including the existing functions and structures. The Petitioner is

also seeking variances to permit the existing rear alteration of the Subject Garage to encroach 2.17 feet into the 50-foot setback from an external street right of way and the existing side alteration to encroach 41.9 feet.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. Confirmation of Nonconforming Uses (Section 129.D)

A nonconforming use is any lawful existing use, whether of a structure or a tract of land, which does not conform to the use regulations of the zoning district in which it is located, on the effective date of those regulations or because of any subsequent amendment thereto. Such use may be confirmed if it is shown by a preponderance of evidence that the use existed at the time of the zoning change and has continued uninterrupted since that date.

In this case, the record includes uncontroverted evidence in the form of affidavits and a staff report documenting the Property's use as a motor vehicle maintenance and repair facility since 2004, when its zoning was changed from M-1 to CE-CLI. The petition includes the Petitioner's statement and affidavit to this effect and the submitted plan depict the use as extending over the entire Property. A site development plan, the 1999 Land Use Plan, and an aerial photograph confirm the Property's continuance use. Consequently, I conclude the use depicted in the petition and nonconforming use plan submitted by the Petitioner is nonconforming in accordance with Section 129.D.

II. Extension, Enlargement, or Alteration of Nonconforming Uses (Section 129.E)

1. The additional 2,786-square foot alterations to the Subject Garage do not alter the use.
2. The 2,786-square foot alterations to the total existing 13,219-square foot floor area of the use represents a 21 percent increase in floor area, which is less than the maximum increase of

100% of the gross floor area allowed by Section 129.E.1.b.

3. The outdoor land area occupied by the nonconforming use will not be enlarged in compliance with Section 129.E.1.c.

4. The alterations will be located to the side and rear of the Subject Garage, within the 50-foot setback. However, the Petitioner's variance requests are being granted as part of this Decision and Order, as discussed below. The largest alteration of the Subject Garage is to its rear and it is not readily visible from the road or surrounding properties. The side alteration is more in compliance with the bulk regulations than the Subject Garage and there is no setback from the adjoining CE property to the southwest. Consequently, the enlargement complies with Section 129.E.1.d. The alterations/additions will be used as motor vehicle maintenance and repair facility and will not generate excessive noise, odors, or other adverse affects. The use will not increase traffic to or on the Property or otherwise increase the intensity of the use of the Property. Consequently, the garage alterations will not cause adverse effect on vicinal properties in accordance with Section 129.E.1.e.

III. The Variance Requests (Section 30.E.1)

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variances comply with Section 130.B.2.a(1) through (4), and therefore may be granted.

The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A "practical difficulty" is shown when the strict letter of the zoning regulation would "unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome." *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

1. In this case, the relocation of MD 176 transformed what was once a long and relatively narrow property with frontage only on its northeast side into a narrower corner lot. Consequently, I conclude there are unique physical conditions causing the Petitioner practical difficulties in complying with the setback requirements, in accordance with Section 130.B.2.a(1).

2. The enlargement to the Subject Garage, as discussed above, will not adversely affect adjacent properties. The variances, if granted, will therefore not alter the essential character of the neighborhood in use is located nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

3. The practical difficulties in complying strictly with the setback regulation arise from the relocation of MD 176 and were not created by the Petitioner, in accordance with Section 130.B.2.a(3).

4. The smaller alteration of the Subject Garage complies more with the 50-foot setback than the Garage itself and the rear alteration encroaches only 2.17 feet into the setback. Within the intent and purpose of the regulations, then, the variances are the minimum necessary to afford relief, in accordance with Section 130.B.2.a(4).

ORDER

Based upon the foregoing, it is this 14th day of July 2008, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Joan A. Gillin for the confirmation and enlargement of a nonconforming use for a motor vehicle maintenance and repair facility and variances to reduce the 50-foot structure setback from an external street right of way to approximately 47.84 for a rear alteration of an existing garage and to about 8.10 feet for side alteration of that same garage in a CE-CLI (Corridor Employment-Continuing Light Industrial Overlay) Zoning District are hereby **GRANTED**;

Provided, however, that the nonconforming use, enlargements, and variances will apply only to the land area, uses, and structures as described in the petition and plan submitted, and not to any other activities, uses, structures, or additions on the Property.

HOWARD COUNTY BOARD OF APPEALS

HEARING EXAMINER

Michelle D.

Date Mailed: 7/17/08

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.